

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.C.R. 2024

(Reference to printed concurrent resolution)

Strike everything after the resolving clause and insert:

"1. Article VI, sections 12, 28, 30, 35, 37, 38, 40 and 41, Constitution of Arizona, are proposed to be amended as follows if approved by the voters and on proclamation of the Governor:

12. Superior court; term of office

Section 12. A. Judges of the superior court in counties having a population of less than ~~two~~ EIGHT hundred ~~fifty~~ thousand persons according to the most recent United States census shall be elected by the qualified electors of their counties at the general election. They shall hold office for a regular term of four years except as provided by this section from and after the first Monday in January next succeeding their election, and until their successors are elected and qualify. The names of all candidates for judge of the superior court in such counties shall be placed on the regular ballot without partisan or other designation except the division and title of the office.

B. The governor shall fill any vacancy in such counties by appointing a person to serve until the election and qualification of a successor. At the next succeeding general election following the appointment of a person to fill a vacancy, a judge shall be elected to serve for the remainder of the unexpired term.

Judges of the superior court in counties having a population of ~~two~~ EIGHT hundred ~~fifty~~ thousand persons or more according to the most recent United States census shall hold office for a regular term of four years except as provided by this article.

28. Justices and judges; dual office holding; political activity; practice of law

Section 28. Justices and judges of courts of record shall not be eligible for any other public office or for any other public employment during their term of office, except that they may assume another judicial office, and upon qualifying therefor, the office formerly held

1 shall become vacant. No justice or judge of any court of record shall  
2 practice law during his continuance in office, nor shall he hold any  
3 office in a political party or actively take part in any political  
4 campaign other than his own for his reelection or retention in office.

5 Any justice or judge who files nomination papers for an elective  
6 office, other than for judge of the superior court or a court of record  
7 inferior to the superior court in a county having a population of less  
8 than ~~two~~ EIGHT hundred ~~fifty~~ thousand persons according to the most  
9 recent United States census, forfeits his judicial office.

10 30. Courts of record

11 Section 30. A. The supreme court, the court of appeals and the  
12 superior court shall be courts of record. Other courts of record may  
13 be established by law, but justice courts shall not be courts of  
14 record.

15 B. All justices and judges of courts of record, except for  
16 judges of the superior court and other courts of record inferior to the  
17 superior court in counties having a population of less than ~~two~~ EIGHT  
18 hundred ~~fifty~~ thousand persons according to the most recent United  
19 States census, shall be appointed in the manner provided in section 37  
20 of this article.

21 35. Continuance in office; continued existence of offices;  
22 application of prior statute and rules

23 Section 35. A. All justices, judges, justices of the peace and  
24 officers of any court who are holding office as such by election or  
25 appointment at the time of the adoption of this section ~~OR ANY~~  
26 ~~AMENDMENT TO THIS SECTION~~ shall serve or continue in office for the  
27 respective terms for which they are so elected or for their respective  
28 unexpired terms, and until their successors are elected or appointed  
29 and qualify or they are retained in office pursuant to section 38 of  
30 this article; ~~—provided, however,~~ EXCEPT that any justice or judge  
31 elected at the general election at which this section is adopted shall  
32 serve for the term for which he is so elected. The continued existence

1 of any office heretofore legally established or held shall not be  
2 abolished or repealed by the adoption of this article. The statutes  
3 and rules relating to the authority, jurisdiction, practice and  
4 procedure of courts, judicial officers and offices in force at the time  
5 of the adoption of this article and not inconsistent herewith, shall,  
6 so far as applicable, apply to and govern such courts, judicial  
7 officers and offices until amended or repealed.

8 B. All judges of the superior court holding office by  
9 appointment or retention in counties with a population of ~~two~~ EIGHT  
10 hundred ~~fifty~~ thousand persons or more according to the most recent  
11 United States census at the time of the adoption of this amendment OR  
12 ANY SUBSEQUENT AMENDMENT to this section shall serve or continue in  
13 office for the respective terms for which they were appointed. Upon an  
14 incumbent vacating the office of judge of the superior court, whether  
15 by failing to file a declaration for retention, by rejection by the  
16 qualified electors of the county or resignation, the appointment shall  
17 be pursuant to section 37 of this article.

18 37. Judicial vacancies and appointments; initial terms;  
19 residence; age

20 Section 37. A. Within sixty days from the occurrence of a  
21 vacancy in the office of a justice OF THE SUPREME COURT or A judge of  
22 ~~any~~ AN INTERMEDIATE APPELLATE court of record, ~~except for vacancies~~  
23 ~~occurring in the office of a judge of the superior court or a judge of~~  
24 ~~a court of record inferior to the superior court,~~ the commission on  
25 appellate court appointments, ~~if the vacancy is in the supreme court or~~  
26 ~~an intermediate appellate court of record,~~ shall submit to the governor  
27 the names of not less than three persons nominated by it to fill such  
28 vacancy, no more than two of whom shall be members of the same  
29 political party unless there are more than four such nominees, in which  
30 event not more than sixty ~~percentum~~ PER CENT of such nominees shall be  
31 members of the same political party.

32 B. Within sixty days from the occurrence of a vacancy in the

1 office of a judge of the superior court or a judge of a court of record  
2 inferior to the superior court except for vacancies occurring in the  
3 office of a judge of the superior court or a judge of a court of record  
4 inferior to the superior court in a county having a population of less  
5 than ~~two~~ EIGHT hundred ~~fifty~~ thousand persons according to the most  
6 recent United States census, the commission on trial court appointments  
7 for the county in which the vacancy occurs shall submit to the governor  
8 the names of not less than three persons nominated by it to fill such  
9 vacancy, no more than two of whom shall be members of the same  
10 political party unless there are more than four such nominees, in which  
11 event no more than sixty per ~~centum~~ CENT of such nominees shall be  
12 members of the same political party. A nominee shall be under sixty-  
13 five years of age at the time ~~his~~ THE NOMINEE'S name is submitted to  
14 the governor. Judges of the superior court shall be subject to  
15 retention or rejection by a vote of the qualified electors of the  
16 county from which they were appointed at the general election in the  
17 manner provided by section 38 of this article.

18 C. A vacancy in the office of a justice or a judge of such  
19 courts of record shall be filled by appointment by the governor without  
20 regard to political affiliation from one of the nominees whose names  
21 ~~shall be~~ ARE submitted to ~~him as hereinabove provided~~ THE GOVERNOR  
22 PURSUANT TO SUBSECTION A OR B. In making the appointment, the governor  
23 shall consider the diversity of the state's population for an appellate  
24 court appointment and the diversity of the county's population for a  
25 trial court appointment, however, the primary consideration shall be  
26 merit. If the governor does not appoint one of such nominees to fill  
27 such vacancy within sixty days after their names are submitted to the  
28 governor by such commission, the chief justice of the supreme court  
29 forthwith shall appoint on the basis of merit alone without regard to  
30 political affiliation one of such nominees to fill such vacancy. If  
31 such commission does not, within sixty days after such vacancy occurs,  
32 submit the names of nominees ~~as hereinabove provided~~ PURSUANT TO

1       SUBSECTION A OR B, the governor shall have the power to appoint any  
2       qualified person to fill such vacancy at any time thereafter prior to  
3       the time the names of the nominees to fill such vacancy are submitted  
4       to the governor ~~as hereinabove provided~~ PURSUANT TO SUBSECTION A OR B.

5       Each justice or judge so appointed shall initially hold office for a  
6       term ending sixty days following the next regular general election  
7       after the expiration of a term of two years in office. Thereafter, the  
8       terms of justices or judges of the supreme court and the superior court  
9       shall be as provided by this article.

10       D. A person appointed to fill a vacancy on an intermediate  
11       appellate court or another court of record now existing or hereafter  
12       established by law shall have been a resident of the counties or county  
13       in which that vacancy exists for at least one year ~~prior to his~~ BEFORE  
14       THE PERSON'S appointment, in addition to possessing the other required  
15       qualifications. A nominee shall be under sixty-five years of age at  
16       the time ~~his~~ THE NOMINEE'S name is submitted to the governor.

17       38. Declaration of candidacy; form of judicial ballot.  
18       rejection and retention; failure to file declaration

19       Section 38. A. A justice or judge of the supreme court or an  
20       intermediate appellate court shall file in the office of the secretary  
21       of state, and a judge of the superior court or other court of record  
22       including such justices or judges who are holding office as such by  
23       election or appointment at the time of the adoption of this section OR  
24       ANY AMENDMENT TO THIS SECTION, except for judges of the superior court  
25       and other courts of record inferior to the superior court in counties  
26       having a population of less than ~~two~~ EIGHT hundred ~~fifty~~ thousand  
27       persons, ~~—~~ according to the United States census, shall file in the  
28       office of the clerk of the board of supervisors of the county in which  
29       he regularly sits and resides, not less than sixty nor more than ninety  
30       days ~~prior to~~ BEFORE the regular general election next preceding the  
31       expiration of his term of office, a declaration of his desire to be  
32       retained in office, and the secretary of state shall certify to the

1 several boards of supervisors the appropriate names of the candidate or  
2 candidates appearing on such declarations filed in his office.

3 B. The name of any justice or judge whose declaration is filed  
4 as provided in this section shall be placed on the appropriate official  
5 ballot at the next regular general election under a nonpartisan  
6 designation and in substantially the following form:

7 Shall \_\_\_\_\_, (Name of justice or judge) of the \_\_\_\_\_  
8 court be retained in office? Yes \_\_\_ No \_\_\_ (Mark X after one).

9 C. If a majority of those voting on the question votes "No,"  
10 ~~then,~~ upon the expiration of the term for which such justice or judge  
11 was serving, a vacancy shall exist, which shall be filled as provided  
12 by this article. If a majority of those voting on the question votes  
13 "Yes," such justice or judge shall remain in office for another term,  
14 subject to removal as provided by this constitution.

15 D. The votes shall be counted and canvassed and the result  
16 declared as in the case of state and county elections, whereupon a  
17 certificate of retention or rejection of the incumbent justice or judge  
18 shall be delivered to ~~him~~ THE INCUMBENT by the secretary of state or  
19 the clerk of the board of supervisors, as the case may be.

20 E. If a justice or judge fails to file a declaration of ~~his~~ THE  
21 JUSTICE'S OR JUDGE'S desire to be retained in office, as required by  
22 this section, ~~then his~~ THE JUSTICE'S OR JUDGE'S office shall become  
23 vacant upon expiration of the term for which such justice or judge was  
24 serving.

25 40. Option for counties with less than six hundred thousand  
26 persons

27 Section 40. Notwithstanding any provision of this article to the  
28 contrary, any county having a population of less than ~~two~~ EIGHT hundred  
29 ~~fifty~~ thousand persons, according to the most recent United States  
30 census, may choose to select its judges of the superior court or of  
31 courts of record inferior to the superior court as if it had a  
32 population of ~~two~~ EIGHT hundred ~~fifty~~ thousand or more persons. Such

1 choice shall be determined by vote of the qualified electors of such  
2 county voting on the question at an election called for such purpose by  
3 resolution of the board of supervisors of such county. If such  
4 qualified electors approve, the provisions of sections 12, 28, 30, 35,  
5 ~~through~~ 37, 38, 39, 41 and 42 shall apply as if such county had a  
6 population of ~~two~~ EIGHT hundred ~~fifty~~ thousand persons or more.

7 41. Superior court divisions; commission on trial court  
8 appointments; membership; terms

9 A. Except as otherwise provided, judges of the superior court in  
10 counties having a population of ~~two~~ EIGHT hundred ~~fifty~~ thousand  
11 persons or more according to the most recent United States census shall  
12 hold office for a regular term of four years.

13 B. There shall be a nonpartisan commission on trial court  
14 appointments for each county having a population of ~~two~~ EIGHT hundred  
15 ~~fifty~~ thousand persons or more according to the most recent United  
16 States census which shall be composed of the following members:

17 1. The chief justice of the supreme court, who shall be the  
18 chairman of the commission. In the event of the absence or incapacity  
19 of the chairman the supreme court shall appoint a justice ~~thereof~~ OF  
20 THE SUPREME COURT to serve in ~~his~~ THE JUSTICE'S place and stead.

21 2. Five attorney members, none of whom shall reside in the same  
22 supervisorial district and not more than three of whom shall be members  
23 of the same political party, who are nominated by the board of  
24 governors of the state bar of Arizona and who are appointed by the  
25 governor subject to confirmation by the senate in the manner prescribed  
26 by law.

27 3. Ten nonattorney members, no more than two of whom shall  
28 reside in the same supervisorial district.

29 C. At least ninety days ~~prior to~~ BEFORE a term expiring or  
30 within twenty-one days of a vacancy occurring for a nonattorney member  
31 on the commission for trial court appointments, the member of the board  
32 of supervisors from the district in which the vacancy has occurred

1 shall appoint a nominating committee of seven members who reside in the  
2 district, not more than four of whom may be from the same political  
3 party. The ~~make-up~~ MAKEUP of the committee ~~shall~~, to the extent  
4 feasible, SHALL reflect the diversity of the population of the  
5 district. Members shall not be attorneys and shall not hold any  
6 governmental office, elective or appointive, for profit. The committee  
7 shall provide public notice that a vacancy exists and shall solicit,  
8 review and forward to the governor all applications along with the  
9 committee's recommendations for appointment. The governor shall  
10 appoint two persons from each supervisorial district who shall not be  
11 of the same political party, subject to confirmation by the senate in  
12 the manner prescribed by law.

13 D. In making or confirming appointments to trial court  
14 commissions, the governor, the senate and the state bar shall endeavor  
15 to see that the commission reflects the diversity of the county's  
16 population.

17 E. Members of the commission shall serve staggered four year  
18 terms. ~~, except that initial appointments for the five additional~~  
19 ~~nonattorney members and the two additional attorney members of the~~  
20 ~~commission shall be designated by the governor as follows:~~

21 ~~1. One appointment for a nonattorney member shall be for a one-~~  
22 ~~year term.~~

23 ~~2. Two appointments for nonattorney members shall be for a two-~~  
24 ~~year term.~~

25 ~~3. Two appointments for nonattorney members shall be for a~~  
26 ~~three-year term.~~

27 ~~4. One appointment for an attorney member shall be for a one-~~  
28 ~~year term.~~

29 ~~5. One appointment for an attorney member shall be for a two-~~  
30 ~~year term.~~

31 F. Vacancies shall be filled for the unexpired terms in the same  
32 manner as the original appointments.

1           G. Attorney members of the commission shall have resided in this  
2 state and shall have been admitted to practice in this state by the  
3 supreme court for at least five years and shall have resided in the  
4 supervisorial district from which they are appointed for at least one  
5 year. Nonattorney members shall have resided in this state for at  
6 least five years, shall have resided in the supervisorial district for  
7 at least one year before being nominated and shall not be judges,  
8 retired judges ~~nor~~ OR admitted to practice before the supreme  
9 court. None of the attorney or nonattorney members of the commission  
10 shall hold any governmental office, elective or appointive, for profit  
11 and no attorney member is eligible for appointment to any judicial  
12 office of this state until one year after membership in the commission  
13 terminates.

14           H. No person other than the chief justice shall serve at the  
15 same time as a member of more than one judicial appointment commission.

16           I. The commission shall submit the names of not less than three  
17 individuals for nomination for the office of ~~the~~ superior court judge  
18 pursuant to section 37 of this article.

19           J. Prior to making recommendations to the governor, the  
20 commission shall conduct investigations, hold public hearings and take  
21 public testimony. An executive session as prescribed by rule may be  
22 held upon a two-thirds vote of the members of the commission in a  
23 public hearing. Final decisions as to recommendations shall be made  
24 without regard to political affiliation in an impartial and objective  
25 manner. The commission shall consider the diversity of the county's  
26 population and the geographical distribution of the residences of the  
27 judges throughout the county, however the primary consideration shall  
28 be merit. Voting shall be in a public hearing. The expenses of  
29 meetings of the commission and the attendance of members thereof for  
30 travel and subsistence shall be paid from the general fund of the state  
31 as state officers are paid, upon claims approved by the chairman.

32           K. After public hearings the supreme court shall adopt rules of

1 procedure for the commission on trial court appointments.

2 ~~L. The members of the commission who were appointed pursuant to~~  
3 ~~section 36 of this article prior to the effective date of this section~~  
4 ~~may continue to serve until the expiration of their normal terms. All~~  
5 ~~subsequent appointments shall be made as prescribed by this section.~~

6 2. The Secretary of State shall submit this proposition to the voters at the  
7 next general election as provided by article XXI, Constitution of Arizona."

8 Amend title to conform

RUSSELL K. PEARCE

hcr2024-se2-pearce  
4/10/08  
2:58 PM  
H:jmb